



STATE OF CONNECTICUT

DEPARTMENT OF REVENUE SERVICES

SN 2003(7.1)

25 Sigourney Street
Hartford CT 06106-5032

SPECIAL NOTICE

Sales and Use Taxes on Health and Athletic Club Services

Purpose: Special Notice 2003(7) has been revised to clarify the application of recently-enacted legislation imposing sales and use taxes on health and athletic club services. It also provides transitional rules for applying tax to sales of services occurring before and after the effective date of the legislation.

Effective Date: Effective April 1, 2003, all providers of health and athletic club services must be in compliance with this Special Notice on or before September 1, 2003.

Statutory Authority:

Conn. Gen. Stat. §12-407(a)(37)(FF), as enacted by 2003 Conn. Pub. Acts 2, §27.

Definition: As used in this Special Notice, *health and athletic clubs* means businesses that feature exercise and other active physical fitness conditioning facilities directed at improving an individual's muscle condition, body tone, or cardiovascular fitness, whether or not on a membership basis. Businesses subject to sales and use taxes include, but are not limited to, those engaged in operating aerobic dance and exercise classes, exercise salons, fitness salons, gymnasiums, physical fitness centers, yoga studios, and health fitness spas.

Employers that provide space in their workplace for a health and athletic club and charge their employees to use the club are rendering health and athletic club services and must collect tax on the charge to the employees.

If an employer subsidizes employee' membership costs to a health and athletic club, the entire charge for the membership, including the portion paid by the employer, is subject to the tax.

Health and athletic clubs do not include businesses that provide *only* sports, amusement, and recreation services, whether they are private membership clubs or open to use by the public upon payment of a fee.

Examples of these businesses include:

- Beach clubs;
- Boating clubs;
- Bowling leagues and teams;
- Golf clubs;
- Hockey clubs;
- Lawn bowling clubs;
- Racquetball clubs;
- Riding clubs;
- Soccer clubs;
- Sports camps;
- Tennis clubs;
- Swimming clubs and yacht clubs;
- Day camps;
- Miniature golf, golf driving ranges, ice skating facilities; **and**
- Businesses that provide instruction or competition in sports, dancing, or martial arts.

Sales and Use Taxes Imposed on Health and Athletic Club Services:

Effective April 1, 2003, sales and use taxes are imposed on health and athletic club services. Payments made to health and athletic clubs, such as service fees, membership fees, initiation fees, application fees, and similar fees, are subject to sales and use taxes.

Health and athletic club services provided at an additional charge are subject to sales and use taxes whether provided to members or guests. Examples include, but are not limited to, additional charges by a health and athletic club for personal training sessions; classes in aerobic exercise, yoga, spinning, Pilates, or cardio-kick boxing; and any other fitness activities not included in basic membership or service fees.

Health and athletic clubs may make nontaxable charges, such as court rentals or rentals of the facility for parties or other events, participation or instruction in sporting activities (such as gymnastics, tennis, or swimming) nutritional counseling, reiki, or massages by licensed massage therapists, in addition to their charges for taxable services. In addition, charges for babysitting, day care, nursery school, or day camp not directed to organized health and athletic activities are not taxable. On the other hand, charges for organized health and athletic activities, such as fitness classes for children are taxable. The health and athletic club must separately state nontaxable charges from charges for taxable health and athletic club services. If these charges are not separately stated, the entire charge is subject to tax.

Note that massage services other than by a licensed massage therapist, tanning salon services, and locker rentals have been taxable since October 1, 1991. See **Special Notice 2001(2)**, *Miscellaneous Personal Services*, for more information.

Multi-use Facilities: If a sports, amusement, or recreation club provides physical fitness conditioning facilities (such as a racquetball club that also offers health and athletic club facilities) or fitness classes, it is considered a multi-use facility. A multi-use facility is presumed to be a health and athletic club because it is not a business that provides *only* sports, amusement, and recreation services as discussed above. A multi-use facility must separately state taxable charges from nontaxable charges. The fee directly attributable to the nontaxable services is not subject to tax when it is a separate charge to the customer. Failure to separately state taxable and nontaxable charges creates a presumption that the entire charge is taxable. The club must maintain adequate records to substantiate that the portion of the charge attributable to the health and athletic club services has not been understated.

Example 1: A racquetball club also operates a health and athletic club. For \$1,000 a year, a member is given full access to both the racquetball and the health and athletic club facilities. For \$400 a year, a member is given access to only the health and athletic club. The club must charge sales tax on the fee paid by the limited access member who only joined the health and athletic club. In addition, the club must separately state the \$400 charge for the health club access on the bill for the full access member and charge sales tax on the \$400. If the fee

is not separately stated, the entire \$1,000 charge by the multi-use facility is subject to sales tax. The facility is presumed to be a health and athletic club because it is not a business that provides *only* sports, amusement, and recreation services.

Example 2: A tennis club charges all of its members \$1,200. As part of the fee, the members can use the tennis courts and the health and athletic club facilities. The facility is presumed to be a health and athletic club because it is not a business that provides *only* sports, amusement, and recreation services. If the tennis club does not separately state the portion of the fee that is for use of the health and athletic facilities, the entire \$1,200 is subject to sales tax.

Example 3: A beach club offers its members aerobic exercise classes and yoga classes for an extra charge. The charge for membership to the beach club is not subject to tax. The beach club must separately state the charge for the classes and charge the tax. Otherwise, the entire membership is subject to tax.

Personal Trainers and Other Fitness Instructors: Charges made by a health and athletic club for the services of a personal trainer or fitness instructor (trainer) are taxable, whether the trainer is a club employee or an independent contractor. The club is responsible for collecting and remitting tax on the services of trainers who are employees. A club is also responsible for collecting and remitting tax on charges the club collects from its customers for the services of trainers who operate as independent contractors. If a club is purchasing a trainer's services as an independent contractor, the club must provide a Resale Certificate to the trainer.

Trainers who are independent contractors and whose customers pay the trainers directly must register with DRS and must collect and remit tax on their services. Therefore, when a trainer operating as an independent contractor at a health and athletic club collects fees directly from customers, the trainer is responsible for collecting and remitting tax on these services. Furthermore, when a trainer operates from his or her own facility, the trainer is operating a health and athletic club, regardless of what type of building it is or who owns it. Therefore, charges for services rendered by a trainer in his or her own facility are taxable. Charges by a trainer who provides services at a customer's home are not taxable.

Health and Athletic Club Services Excluded From Sales Tax: The legislation excludes from sales and use taxes health and athletic club services provided:

- Without an additional charge and included in dues or initiation fees paid to the club that are subject to dues tax under Conn. Gen. Stat. §12-543 (for purposes of the dues tax, a *club* is any organization that is owned or operated by its members);
- By a Connecticut municipality; or
- By a non-profit organization described in Internal Revenue Code §501(c).

Dues Tax Implications: While some health and athletic clubs may be exempt from the dues tax, charges made by the clubs may be subject to sales and use taxes as follows:

- Clubs where the annual dues of a member enjoying full privileges and any initiation fee required of each member are each \$100 or less are exempt from dues tax. (See **Informational Publication 2003(11)**, *Q & A: The Dues Tax*, for more information.) However, any separately stated charges for health and athletic club services are *subject to sales and use taxes*.
- Clubs sponsored and controlled by the federal government or the State of Connecticut are exempt from dues tax, but are *subject to sales and use taxes* on any separate charges for health and athletic club services.

Transitional Rules: Payments made for health and athletic club services are subject to sales and use taxes as follows:

- Payments made on or before February 28, 2003, for services provided before and after April 1, 2003, are not subject to tax.
- Payments made after February 28, 2003, for services provided on or after April 1, 2003, are fully subject to tax.
- Payments made after February 28, 2003, for services provided before and after April 1, 2003, are subject to tax on that portion of the services provided on or after April 1, 2003.
- Payments made at any time, including payments for past due charges, for services provided during periods before April 1, 2003, are not subject to sales and use taxes.

Information for New Retailers: Service providers charging and remitting sales and use taxes for the first time should consult **Informational Publication 2000(26)**, *Getting Started In Business*, for information on how to register as retailers and file sales and use tax returns.

Effect of This Document: A Special Notice announces a new policy or practice in response to changes in State or federal laws or regulations or to judicial decisions. A Special Notice indicates an informal interpretation of Connecticut tax law by DRS and may be referred to for general guidance by taxpayers or tax practitioners. It is not a legal document.

Effect on Other Documents: Special Notice **2003(7)**, *Sales and Use Taxes on Health and Athletic Club Services*, is modified and superseded.

For Further Information: Please call DRS during business hours, Monday through Friday:

- **1-800-382-9463** (in-state), or
- **860-297-5962** (from anywhere)

TTY, TDD, and Text Telephone users only may transmit inquiries anytime by calling 860-297-4911.

Forms and Publications: Forms and publications are available anytime at:

- **Internet:** Preview and download forms and publications from the DRS Web site at **www.ct.gov/DRS**
- **DRS TAX-FAX:** Call **860-297-5698** from the handset attached to your fax machine and select from the menu.
- **Telephone:** Call **860-297-4753** (from anywhere), or **1-800-382-9463** (in-state) and select **Option 2** from a touch-tone phone.

Paperless Filing Methods (fast, easy, free, and confidential):

- **For business returns:** Use *Fast-File* to electronically file sales and use taxes, business use tax, room occupancy tax, or withholding tax returns over the internet or telephone **860-947-1988**. Visit the DRS Web site at **www.ct.gov/DRS** and click on *File Tax Returns On-Line*.
- **For resident income tax returns:** Use *WebFile* to file personal income tax returns over the Internet. Visit the DRS Web site at **www.ct.gov/DRS** and click on *File Tax Returns On-Line*.

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